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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re A.M., a Person Coming Under the  
Juvenile Court Law.

NAPA COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

G.M. et al.,

Defendants and Appellants.

A156444

(Napa County  
Super. Ct. No. 17JD000023)

This appeal is from a juvenile court order terminating the parental rights of G.M. (Father) to his son A.M. pursuant to Welfare and Institutions Code section 366.26<sup>1</sup> and from the denial of a request by G.F. (Mother) seeking an evidentiary hearing on Mother's section 388 petition.

After reviewing the juvenile court record, appointed counsel for Father and Mother both informed this court they could find no arguable issues to raise on behalf of their clients, and accordingly filed no-issues statements pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, 994.

Pursuant to *In re Sade C.*, we shall dismiss the appeal.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## **I. BACKGROUND**

### **A. Procedural History**

This is the fifth appeal in this case by Mother and Father. They previously appealed from the juvenile court's jurisdictional and dispositional findings and orders denying them reunification services and setting a section 366.26 hearing. This court denied the petitions for extraordinary writ in an opinion filed March 15, 2018. (*G.F. v. Superior Court of Napa County* (March 15, 2018, A152551) [nonpub. opn.] )

Mother and Father filed three additional appeals since this court filed its opinion denying their writ petitions. Mother voluntarily dismissed all three of her appeals; Father voluntarily dismissed two of his appeals and filed a no-issues statement with respect to an appeal challenging findings and orders denying his request for a relative placement assessment under section 361.3 (No. A153552). This court dismissed appeal No. A153552 on November 15, 2018.

### **B. Developments Following Denial of Relative Placement in December 2017**

#### *1. A.M.'s Placement with a Skilled Caregiver Who Wishes to Adopt Him*

The section 366.26 WIC report dated December 6, 2018 indicated Father had been in and out of jail for violating his probation. Meanwhile, A.M.'s diagnosis of cerebral palsy, seizure disorder, lower extremity spastic quadriparesis and gastroesophageal reflux disease remained unchanged.

Even though A.M. was approximately 22 months old at the time of the report, his continued overall development was at a newborn to six-week old infant stage. His large and fine motor skills were severely limited as was his social emotional development. He cooed and cried to communicate but was unable to use words. A.M. received occupational and physical therapy.

A.M. was on his fourth placement since he was discharged from the hospital in April 2017. The first two homes were unable to meet A.M.'s longstanding needs and A.M. was moved to his third placement for an interim period with the understanding

A.M. would be moved to a permanent home. A.M. was placed with his current caregiver on August 8, 2017.

His current caregiver had extensive training and experience caring for children with severe medical needs and developmental delays. The home was a certified Regional Center home that cared for children with very similar injuries and lifelong prognoses similar to A.M.'s.

The caregiver was committed to providing A.M. permanency through adoption with 24-hour care. A.M.'s caregiver was married and her spouse cared for A.M. on occasion for brief periods of time. The caregiver, however, would be the sole adoptive parent for A.M. She had four adult children and several grandchildren.

The caregiver hired two staff to assist her and they received specialized training. One of the staff members was the caregiver's adult daughter. The home was observed to be equipped with the necessary equipment. A.M.'s caregiver previously adopted another child.

The social worker reported the caregiver was very attuned to A.M. and knew how to respond appropriately when he had a seizure and could read his cues. A.M. turned his head to follow her voice and he smiled and cooed at her. The caregiver had more than forty years of experience caring for children with needs similar to A.M.'s.

Mother and Father had supervised visits with A.M. for once a month for one hour. During visits the parents took turns holding A.M., read and talked to him and took pictures and videos with him. Father had not visited A.M. since he was incarcerated on September 5, 2018.

## *2. The Section 388 Petitions Requesting Increased Visits and a Bonding Study*

On January 9, 2019, Mother filed a section 388 petition requesting Mother's visitation be increased from once a month to once weekly and for an order for a bonding study. A hearing was set for January 22, 2019 to determine whether to grant Mother an evidentiary hearing on her petition.

Subsequently, at that hearing held on January 22, 2019, the court denied Mother's request for an evidentiary hearing on the petition. Mother's trial counsel and Mother did not attend the hearing.

On January 24, 2019, Mother filed another identical section 388 petition requesting the Mother's visitation be increased from once a month to once weekly and for an order for a bonding study. Mother requested the court re-calendar the section 388 petition due to not being timely notified of the previous hearing.

On the same day, Father filed a joinder request to Mother's section 388 petition filed on January 24, 2019 requesting increased visits and a bonding study. The court denied the parents' request for an evidentiary hearing on the petition the same day. The court found the request did not state new evidence or a change of circumstances.<sup>2</sup>

The court appointed special advocate (CASA) recommended A.M. be adopted by his caregiver and for the termination of parental rights.

### *3. The Section 366.26 Hearing*

Mother attended the section 366.26 hearing held on January 28, 2019. Father did not attend. He was in a residential rehabilitation facility in San Francisco. Father's trial counsel requested a continuance so he could attend.

Father's trial counsel spoke to Father the weekend before the hearing and did not know why Father was not present. Father was aware of the hearing. The court denied Father's continuance request. The court also denied Mother's request to re-calendar her section 388 petition.

At the section 366.26 hearing, social worker Kelli Forrester testified that A.M. had a bond with his caregiver. She did not believe Mother had a bond with A.M. A.M.'s caregiver was able to take care of his needs.

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<sup>2</sup> Mother filed a letter with this court on June 6, 2019, which we interpret to be an effort to apprise us of information supporting her appeal from the denial of her section 388 petition. We construe her filing as a request for leave to file a letter pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835, 844. We grant leave to file the letter nunc pro tunc.

The caregiver has extensive knowledge about caring for children with similar injuries. A.M. had been in her care for the past 16 months. Ms. Forrester was not aware of any legal issues preventing the caregiver from adopting A.M. The caregiver's husband consented to his wife's adoption of A.M.

A.M. made some significant strides including being able to track with his eyes. He also smiled and laughed. The social worker visited A.M. eight times with the caregiver present.

Ms. Forrester never witnessed Father with A.M. She did not believe Father had a bond with A.M. based on the time he spent with his son as documented in the visitation notes.

Mother testified she never missed her once a month supervised visits. During visits, A.M. followed the sound of her voice, made eye contact with her and cooed.

During closing arguments, Father's trial counsel argued A.M. was not specifically adoptable by clear and convincing evidence.

After hearing testimony and considering evidence the juvenile court found by clear and convincing evidence A.M. was specifically adoptable by his caretaker. The court found no exceptions to the termination of parental rights applied. Father did not maintain visits with A.M.

Father did not attend the section 366.26 hearing despite the court checking in with his counsel twice during the day to see if there were updates on his whereabouts. The court did not find Mother's bond with A.M. rose to the level that outweighed the benefits of adoption.

At the conclusion of the hearing, the court entered an order terminating Mother's and Father's parental rights. On January 31, 2019, Father and Mother timely filed notices of appeal challenging the court's findings and the order of termination.

## **II. DISCUSSION AND DISPOSITION**

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is an appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If an

appellant fails to do so, the appeal may be dismissed. (*In re Sade C.*, *supra*, 13 Cal.4th at p. 994.)

The no-issues statements filed by counsel for Mother and Father fail to meet this burden. Counsel nonetheless advised their clients that this court may allow them to file a letter raising any issues they may wish us to consider. Having received no request from Father for leave to file such a letter under *In re Phoenix H.*, *supra*, 47 Cal.4th at page 844 and having reviewed Mother's *In re Phoenix H.* letter (see fn. 2, *ante*), we shall dismiss the appeal.

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STREETER, J.

We concur:

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POLLAK, P.J.

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BROWN, J.

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